

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MUCHMORES'S CAFÉ, LLC,

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.

STIPULATION AND ORDER
OF SETTLEMENT AND
DISMISSAL

14-cv-05668 (RRM)(RER)
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WHEREAS, plaintiff Muchmore's Cafe, LLC commenced this action on or about September 26, 2014, seeking "declaratory and injunctive relief determining the Cabaret Law to be unconstitutional, and enjoining further enforcement of the Cabaret Law"; and

WHEREAS, plaintiff Muchmore's Café, LLC then filed an Amended Complaint on October 27, 2014, seeking "declaratory and injunctive relief determining the Cabaret Law to be unconstitutional, and enjoining further enforcement of the Cabaret Law"; and

WHEREAS, defendant The City of New York (the "City"), by its attorney, Zachary W. Carter, Corporation Counsel of the City of New York, filed an answer to the Amended Complaint on November 25, 2014; and

WHEREAS, the City denied the material allegations set forth in the Amended Complaint and asserted affirmative defenses; and

WHEREAS, there was subsequent motion practice by both plaintiff Muchmore's Café, LLC and the City, as well as discovery conducted by both parties; and

WHEREAS, Local Law 214 of 2017, a bill repealing the Cabaret Law, was signed into law by Mayor Bill de Blasio on November 27, 2017; and

WHEREAS, the parties and their respective counsel now desire to resolve the claims of Muchmore's Café, LLC against the City, including all claims for all attorneys' fees, costs and expenses related to this matter, without admitting any fault or liability and without further proceedings; and

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. The City of New York shall pay Muchmore's Café, LLC the amount of sixty thousand dollars (\$60,000.00) for attorneys' fees, costs and expenses, in full and final satisfaction of all claims against the City that were raised or could have been raised in this action, including claims for attorneys' fees, costs and expenses ("the settlement amount").

2. Payment of the settlement amount shall be made by mailing a check made payable to "Muchmore & Associates PLLC" in the amount of sixty thousand dollars (\$60,000.00) to Muchmore's Café, LLC's attorneys at Muchmore & Associates PLLC, 217 Havemeyer Street, 4th Floor, Brooklyn, New York 11221.

3. The City of New York shall make payment of the settlement amount after receipt of the following: 1) a fully executed copy of this Stipulation and Order of Settlement and Dismissal so-ordered by the Court; 2) Releases executed by Muchmore's Café, LLC and Muchmore & Associates PLLC; and 3) Affidavits of No Liens executed by Muchmore's Café, LLC and Muchmore & Associates PLLC.

4. In consideration for the relief detailed in paragraphs 1 and 2 above, Muchmore's Café LLC shall voluntarily dismiss the action against the City with prejudice and without further costs or fees.

5. In consideration for payment of the settlement amount, Muchmore's Café, LLC and its counsel agree to release the City and all departments, officials, employees, representatives and agents of the City, past and present, in their individual or official capacities, from each and every claim, and any claim for attorneys' fees, costs and expenses, arising from the acts and omissions complained of in the Amended Complaint. Muchmore's Café, LLC and Muchmore & Associates PLLC has executed, or will execute, Releases to be held by the City, which will take effect upon payment of the settlement amount.

6. Plaintiff and its counsel shall execute and deliver to the City's attorney all documents necessary to effect this settlement, including, without limitation, a signed Release for Muchmore's Café, LLC and Muchmore's & Associates PLLC based on the terms of paragraph 5 above. The payment set forth above is subject to and conditioned on delivery of such documents to the City's undersigned attorney.

7. Nothing contained herein shall be deemed to be an admission by the City that it has in any manner or way violated the rights of Muchmore's Café, LLC or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. Nor shall anything contained herein be deemed to be an admission by the City that Muchmore's Café, LLC is entitled to the amount agreed to herein. This Stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

8. Nothing herein shall constitute a policy or practice of the City or be used as evidence of any wrongdoing by the City, or any department, officials, employees, representatives

and agents of the City, past and present, in their individual or official capacities, in any future actions or proceedings.

9. This Stipulation contains all the terms and conditions agreed upon by the parties, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant action shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

10. The parties have reviewed and revised this Stipulation, and any rule of construction, by which any ambiguities are to be resolved against the drafting party, shall not be applied in the interpretation of this Stipulation.

11. Facsimile execution of this Stipulation by the undersigned shall constitute original signatures for filing with the Court.

Dated: New York, New York
January 12, 2018

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SO ORDERED:

United States Magistrate Judge Ramon E. Reyes, Jr.